

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DREW ADAMS, a minor, by and through
his next friend and mother, ERICA
ADAMS KASPER,

Plaintiff,

Case No.: 3:17-cv-00739-TJC-JBT

v.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Defendant.

**DEFENDANT'S MOTION FOR STUDENT AND PARENT WITNESSES TO
PROCEED ANONYMOUSLY AND/OR UNDER A PSEUDONYM AND REQUEST
FOR EXPEDITED BRIEFING SCHEDULE AND REVIEW**

Defendant, through its undersigned counsel, and pursuant to Fed. R. Civ. P. 26 (c) and M.D. Fla. Loc. R. 3.01, respectfully moves for the entry of a Protective Order permitting student witnesses and their parents to proceed anonymously and/or under pseudonyms in this case. In support hereof, Defendant states as follows:

1. Plaintiff self-identifies as a transgender male and alleges Defendant is violating his rights under the Equal Protection Clause of the Fourteenth Amendment (Count I) and Title IX of the Educational Amendments of 1972 ("Title IX")(Count II) by not allowing him to use the group or multi-user bathrooms designated for "male" occupants.

[Doc. 60].

2. Transgender bathroom cases and policies are controversial in nature and have garnered significant national and local attention. Elements of the transgender bathroom debate have undoubtedly produced strong feelings on both sides of the issue.

3. National and local media have also covered this case, including the Washington Post, The New York Times, Yahoo.com, Newsweek, The Huffington Post, The St. Augustine Record, and The Florida Times-Union, just to name a few.

4. Plaintiff's counsel has also actively published media links and releases about this case, to-wit: Lambda Legal has created a website devoted to this case with links to filings and press releases,¹ and the Pillsbury law firm has issued a media release about the case.²

5. Defendant is aware of students and parents of students of Allen D. Nease High School and other schools within the St. Johns County School District who have expressed an interest in providing testimony in this case. However, because of the nature of the debate surrounding transgender bathrooms within the locale of the District and throughout the country and the significant media attention drawn to this case and others like it, these students (all of whom are minors) and their parents have expressed genuine concerns, including the repercussions that may follow if their identities are revealed.

6. In light of these concerns, Defendant respectfully requests the Court enter a Protective Order to allow them to proceed anonymously and/or through pseudonyms in this

¹ See, https://www.lambdalegal.org/in-court/cases/fl_adams-v-school-board-st-johns-county (Last accessed October 9, 2017).

² See, <https://www.pillsburylaw.com/en/news-and-insights/lawsuit-alleges-gender-identity-discrimination.html> (Last accessed October 9, 2017).

case. Specifically, Defendant seeks a Protective Order which contains the following specific protections and obligations of the parties:

- (a) Students and parents of students may proceed anonymously and/or under a pseudonym in all filings and proceedings in this manner;
- (b) All students shall and parents of students may, at their choosing, have their deposition testimony perpetuated at trial if they desire in lieu of personally appearing at trial;
- (c) Defendant's counsel shall notify Plaintiff's counsel of the identity of all students and parents of students that Defendant intends to call as a witness. Plaintiff's counsel may not disclose the identity of any student or any parent of a student who chooses to proceed anonymously or under a pseudonym to any other person except other attorneys who have made an appearance on Plaintiff's behalf, and personnel within the attorney's law firm or legal office, including paralegals, law clerks, and clerical staff who are assisting in the litigation. Prior to disclosing this information to these individuals, Plaintiff's counsel must notify the receiving individuals of their obligation not to disclose the identity of student or parent witnesses to anyone as well as the existence of this Protective Order and their obligation to comply with all terms of this Procedure Order;
- (d) Plaintiff's counsel and anyone with whom Plaintiff's counsel discloses information herein shall not disclose the identity of or information from which one could reasonably determine the identity (i.e. name, age, grade, address, occupation, business, or other information by which one could likely discover the identity) of students or parents of students that are witnesses in this proceeding;
- (e) Deposition transcripts of students and parents of students who choose to remain anonymous shall be redacted such that the identity of such witnesses will be by pseudonyms only;
- (f) All court filings or representations in open court shall not disclose the identity of or information from which one could determine the identity (i.e. name, age, grade, address, occupation, business, or other information by which one could likely discover the identity) of students or parents of students but instead shall refer to these individuals by their respective pseudonyms; and
- (g) The parties counsel and those with whom counsel have disclosed information herein will sign an acknowledgement in which each such person agrees to comply with the Court's Order, and further understands that any violation of

the terms of the Court's Order will that individual to Court-imposed sanctions including, but not limited to, contempt of court.

7. Pursuant to M.D. Fla. Loc. R. 3.01(g), the undersigned certifies that he conferred with Plaintiff's counsel multiple times by telephone and email in September and October (with the most recent communication having taken place on October 11, 2017) with respect to the relief requested herein. Plaintiff's counsel's position is that Plaintiff will follow the constraints in Rule 5.2 of the Federal Rules Civil of Civil Procedure with respect to minors only and objects to any other relief sought by Defendant, including any relief directed at students who are above the age of majority.

8. Although the parties could not come to an agreement about the terms of protecting the identity of students and parents, it should be noted the parties were able to agree to the terms of a protective order related to other information covered by Rule 5.2, but to which Plaintiff insisted upon extra protection. [Doc. 65 and 65-1].

9. Due to the truncated discovery period and expedited trial, Defendant respectfully requests this Court order an expedited response to this motion and expedite the review and disposition of this Motion. In prior discussions, Plaintiff's counsel has threatened moving to compel Defendant to disclose witnesses in compliance with Rule 26(e), Fed. R. Civ. P. As Defendant's counsel has advised, as it currently stands, all students and certain parents are simply unwilling to testify unless and until there is anonymity in place. The Court's resolution of this issue is the linchpin of these witnesses' availability for the Defendant.

WHEREFORE, Defendant respectfully requests the entry of a Protective Order consistent with the terms set forth herein in addition to any other relief this Court deems just and proper.

MEMORANDUM OF LAW IN SUPPORT

Rule 26 (c) of the Federal Rules of Civil Procedure permits the Court, for good cause shown, to issue an order to protect a person from annoyance, embarrassment, or oppression by forbidding the disclosure, among other things. “Federal courts have superimposed a balancing of interests approach for Rule 26’s good cause requirement.” Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1313 (11th Cir. 2001)(internal citation omitted). “This standard requires the district court to balance the party’s interest in obtaining access against the other party’s interest in keeping the information confidential.” Id.

Case law in the Eleventh Circuit addressing requests for protective orders seeking anonymity for non-party witnesses is sparse; however, a recent case from the Middle District of Florida applied the rules governing party anonymity to a motion for a protective order seeking to permit non-party witnesses to proceed anonymously. Florida Action Comm., Inc. v. Seminole County, 6:15-cv-1525-Orl-40GJK, 2016 WL 6080988, at *2 (M.D. Fla. Oct. 18, 2016). There, the court considered the following factors when determining whether to permit a non-party witness to proceed anonymously:

- (1) whether the party challenges government activity;
- (2) whether the party will be “required to disclose information of the utmost intimacy;”
- (3) whether the party will be coerced into admitting illegal conduct or the intent to commit illegal conduct, thereby risking criminal prosecution;
- (4) whether the party is a minor;
- (5) whether the party will be exposed to physical violence should he or she proceed in their own name; and

- (6) whether proceeding anonymously “pose[s] a unique threat of fundamental unfairness to the [other party].”

Id. at *2, citing Plaintiff B v. Francis, 631 F.3d 1310, 1316 (11th Cir. 2011)(applying the above-referenced factors to issues regarding party anonymity).

However, courts are not constrained to consider only these factors. “Courts may consider other factors as well based on the particularities of each case, and no single factor is necessarily dispositive. *Id.* at *2, citing Doe v. Frank, 951 F.2d 320, 323 (11th Cir. 1992) (per curiam). To this end, the court in Florida Action Comm. also considered whether denying the protective order would chill the litigation and whether the public interest would be served by granting the protective order. *Id.* at *3.

Good Cause Exists to Enter a Protective Order

Under the particular and unique circumstances of this case, there are ample reasons why allowing students and parents to proceed anonymously and/or through pseudonyms is necessary. With the media attention this case is receiving, it is predictable that student witnesses will be subjected to unnecessary attention while they try to focus on their schooling. Additionally, student witnesses are concerned that the disclosure of their identities will subject them to harassment, social stigmatization, and other reprisals at school. Such a concern can be alleviated if a protective order is entered. See e.g., Doe v. Stegall, 653 F.2d 180 (5th Cir. Unit A Aug. 1981)(permitting minor plaintiffs in Establishment Clause challenge to bring lawsuit under pseudonym to avoid potential harassment and

intimidation)³; EEOC v. Spoa, LLC, No. CCB-13-1615, 2013 WL 5634337 (D. Md. Oct. 15, 2013) (granting leave for a member of alleged class, who was a potential witness, to proceed anonymously). See also, Doe v. Univ. of S. Alabama, CV 17-0394-CG-C, 2017 WL 3974997, at *2 (S.D. Ala. Sept. 8, 2017)(permitting student witnesses from a college disciplinary proceeding to be identified by aliases to preserve their anonymity in federal court case).

Moreover, keeping the identity of K-12 public students confidential in litigation serves the public interest of ensuring students are not unnecessarily subjected to public criticism (or harassment in school) for their participation as witnesses in a lawsuit. Also, maintaining the anonymity of students and parents will in no way prejudice Plaintiff in this proceeding. He will have every opportunity to conduct discovery and confront these witnesses.

Finally, Defendant asks that parent witnesses in this matter be allowed to proceed pseudonymously in order to protect the identity of students. Even if students are given leave to proceed anonymously, this protection would be rendered worthless if their parents' identities are easily discoverable. It would be all too easy to discover the anonymous students' identities if the only work that needed to be done was to discover which adults were linked to the trial via public record and then to simply match the parent to the child. See Doe v. Harlan Cty. Sch. Dist., 96 F. Supp. 2d 667 (E.D. Ky. 2000) (allowing parents and children to proceed anonymously to protect the identity of the children in a religious matter); Stegall,

³ See Bonner v. Prichard, 661 F.2d 1206 (11th Cir. 1981) (ruling that all decisions of the Fifth Circuit before September 30, 1981 were to be binding precedent for the Eleventh Circuit).

653. F.2d 180 (mother of two of the children bringing the suit allowed to proceed anonymously with the children to protect their identities).

Dated this 12th day of October, 2017.

Respectfully submitted,

/s/ Terry J. Harmon

TERRY J. HARMON

Trial Counsel

Florida Bar Number: 0029001

tharmon@sniffenlaw.com

MICHAEL P. SPELLMAN

Florida Bar Number: 937975

mspellman@sniffenlaw.com

ROBERT J. SNIFFEN

Florida Bar Number: 000795

rsniffen@sniffenlaw.com

KEVIN C. KOSTELNIK

Florida Bar Number: 0118763

kkostelnik@sniffenlaw.com

SNIFFEN & SPELLMAN, P.A.

123 North Monroe Street

Tallahassee, Florida 32301

Telephone: (850) 205-1996

Facsimile: (850) 205-3004

Counsel for St. Johns County School Board

CERTIFICATE OF SERVICE

The undersigned certifies that on this 12th day of October, 2017, a true and correct copy of the foregoing was electronically filed in the U.S. District Court, Middle District of Florida, using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Terry J. Harmon

TERRY J. HARMON